Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NO. 89-1400

IN THE

Supreme Court of the United States

October Term, 1990

CITY OF LONGMONT COLORADO,

Petitioner

v.

JAMES OAKLEY

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITIONER'S REPLY BRIEF

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I. AS A CASE OF FIRST IMPRESSION INVOLVING INTERPRETATION OF A FEDERAL STATUTE HAVING BROAD APPLICABILITY, THIS CASE MERITS REVIEW ON CERTIORARI.

Contrary to Respondent's argument (page 7, BRIEF IN OPPOSITION), cases of first impression, like this case, involving interpretation of broad-ranging federal statutes, have been treated by this Court as presenting important federal questions, warranting review on certiorari, Reading Company v. Brown, 391 U.S. 471, 474, 88 S.Ct. 1759, 1761, 20 L.Ed.2d 751 (1968), American Federation of Musicians v. Wittstein, 379 U.S. 171, 174, 85 S.Ct. 300, 302, 13 L.Ed.214 (1964), see also Franchise Tax Board of the State of California v. Construction Laborer's

Vacation Trust for Southern California, 463 U.S. 1, 17, 103 S.Ct. 2841, 2850, 77 L.Ed.2d 420 (1983) (interpretation of 42 U.S.C. §1331 regarding removal jurisdiction over state law declaratory judgment actions a question of first impression). Petitioner's research has disclosed no decisions of this Court denying certiorari to interpret a federal statute on the grounds that the issue was one of first impression.

II. THE PUBLIC HEALTH SERVICE NOTICE DOES NOT ADDRESS THE ISSUES POSED IN THIS CASE

At Page 12 of the Respondent's Brief in Opposition, he argues that the Public Health Service Notice published at 52 Fed.Reg. 604 (January 7, 1987) represents

an interpretation of the statute consistent with that of the Tenth Circuit. But the Notice and related material clearly indicate that it does not address the issues posed in this case and is not intended to be relied upon in deciding these issues. It is clear that the Public Health Service Notice is only intended to address the form to be used by local governments for notifying qualified beneficiaries of their rights to elect coverage, and is not intended to address the proper interpretation of the early termination of coverage provisions.

> "Neither this notice nor the model statement represents authority with respect to issues within the regulatory jurisdiction of the

Department of the Treasury or the Department of Labor. Thus, to the extent that either document reflects the position on any such issue, that document should not be relied upon." 52 Fed.Reg. 605

Department of Labor technical release number 86-2, upon which the Public Health Service Notice is based, contains a similar limitation:

"Consistent with the Conference Report, the Department has limited its focus to examining the disclosure and reporting requirements contained in [the statute]."

. . .

"Neither this release nor the model statement represents authority with respect to issues within the regulatory jurisdiction of the Department of the Treasury. Thus, to the extent that either document reflects a position on any such issue, such document should not be relied on." ERISA Technical Release Number 86-2, Labor - Department Guidance on Group Health Continuation Coverage Notification Provisions, 13 Pension Rptr. (BNA) 1184, 1184-1185 (June 30, 1986)

As explained in the Petition for Certiorari (Pages 26 through 28), Congress clearly intended the Treasury Department

Regulations to govern interpretation of the substantive requirements of continuation coverage, including the early termination provisions, and nothing in the Public Health Service Notice or the Labor Department Technical Release is intended to conflict with the Treasury Department's interpretation.

III. THIS CASE HAS NOT BEEN "SETTLED", AND POSES A VERY REAL QUESTION OF IMPORTANCE TO PRACTICALLY ALL PUBLIC AND PRIVATE EMPLOYERS IN THIS COUNTRY.

At page 26, paragraph II.B. of his BRIEF IN OPPOSITION, the Respondent states that the "settlement agreement" merely reserves to the Petitioner the right to seek certiorari review. Respondent

intimates that the case is practically moot except for the Petitioner's interest in recovering its payments to Respondent.

But the so-called "settlement agreement" (attached as an appendix) merely reflects a promise by the Petitioner not to seek a stay of execution of the 10th Circuit's mandate pending review by this Court (see appendix 9a) in exchange for the Respondent's agreement limiting the amount of benefits payable in the event the 10th Circuit's opinion is not reversed (see Appendix 7a).

The correctness of the 10th Circuit's decision and the City of Longmont's obligations to pay COBRA "continuation coverage" benefits remain very much live issues, having a direct impact not only

upon the City of Longmont, but also upon most public and private group health plans, whether wholly or partly (like Longmont's) self-funded. The issue is important enough that the Tenth Circuit decision has been referenced in several national publications, see News, Litigation: Cobra Benefit Continuation Ordered for Disabled City Employee, 16 Pension Rptr. (BNA) 1819 (October 23, 1989); Also in the News, 6 Benefits Today (BNA) 350 (November 3, 1989); State & Local Case File, Insurance Coverage: Budget Act Benefit Continuation Ordered For Disabled City Worker, 27 Govt. Empl. Rel. Rpt. (BNA) 1410 (Issue No. 1337) (October 30, 1989)

CONCLUSION

This case involves a live controversy and poses important questions of federal law that have not been, but should be settled by this Court. Certiorari should be granted and the decision of the 10th Circuit Court of Appeals should be reversed.

Dated _____, 1990

Respectfully submitted,

_____

Claybourne M. Douglas
City Attorney
Civic Center Complex
Longmont, Colorado 80501
Telephone: (303) 651-8619

Attorney for Petitioner,
City of Longmont

CERTIFICATE OF SERVICE

I, Claybourne M. Douglas, City Attorney for the City of Longmont, Colorado, Petitioner herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of _____, 1990, I served copies of the foregoing PETITIONER'S REPLY BRIEF on SAFECO Insurance Company of America and Respondent, James Oakley, by depositing three copies each in the United States Post Office located at 201 Coffman Street, Longmont, Colorado, with first class postage prepaid, and properly addressed to their counsel of record:

Mark E. Biddison
Stevens and Littman
1881 9th Street, Suite 335
Boulder, Colorado 80302
Telephone: (303) 443-6690
Attorney for Respondent James Oakley

Robert M. Baldwin
Long & Jaudon
1660 Ogden Street
Denver, Colorado 80218
Telephone: (303) 832-1122
Attorney for SAFECO Insurance
Company of America

All parties required to be served have been served.

Claybourne M. Douglas
City Attorney
City of Longmont, Colorado
408 3rd Avenue
Civic Center Complex
Longmont, Colorado 80501
Telephone: (303) 651-8619

Appendix 1a

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (herein "Settlement Agreement"), is entered into this 19th of February, 1990 by and between James Oakley, by and through his Conservator, Joanne Oakley, and the City of Longmont and the City of Longmont Employee Benefit Health Fund, referred to collectively herein as "City", by their attorney, Claybourne Douglas.

WHEREAS, James Oakley is a former employee of the City of Longmont (herein "City"), whose employment was terminated following a non-work related head injury; and

WHEREAS, while employed with the City, James Oakley was a covered employee under

the City's group health insurance plan; and

WHEREAS, upon termination of employment with the City, the City determined that James Oakley was not entitled to more than 90 days of continuation coverage under the City's group health plan because James Oakley was also covered by a group health insurance plan through his wife's (Joanne Oakley's) employment with the Times Call; and

WHEREAS, Joanne Oakley's group health insurance plan through her employment with the Times Call did not provide identical coverage to that provided to James Oakley under his group health plan with the City; and

WHEREAS, James Oakley brought suit against the City in the United States District Court, District of Colorado, case number 88-B-1204; and

WHEREAS, the United States Court of Appeals, for the Tenth Circuit, case number 89-1021, has held that James Oakley is entitled to continuation health benefits under the City's group health insurance plan; and

WHEREAS, James Oakley has been receiving continuous services from Learning Services, Bear Creek, from December 21, 1988, to date, related to his head injury; and

WHEREAS, a dispute exists between the parties as to whether the services being rendered by Learning Services, Bear Creek, is a covered expense under the City's group health insurance plan; and

WHEREAS, the parties hereto desire to compromise and settle their differences regarding coverage, under the plan, of payments for services rendered by Learning Services, Bear Creek; and

WHEREAS, the parties recognize that upon a successful appeal by the City of the 10th Circuit Court of Appeals decision and order in case number 89-1021, the City may elect to seek recovery from James Oakley , his estate, and any health care providers of any and all payments hereunder;

Appendix 5a

1. As used in this agreement, the term, "continuation health benefits" means benefits payable by the City of Longmont Employee Benefit Health Fund by reason of the COBRA "continuation coverage" requirements of 42 U.S.C. § 300bb-1 et seq

(as now or hereafter amended), the City of Longmont Group Health Plan, or any other Federal or State statute, rule or regulation.

2. In consideration of the payments called for herein, James Oakley, for himself, his dependents and his heirs, completely releases and forever discharges the City of Longmont, its insurers, its agents, and

employees from all claims, actions, causes of action, demands, rights, damages, costs, loss of services, expenses and compensation whatsoever, which James Oakley now has or which he may hereafter have on account of or in any way related to his claim against the City of Longmont for payment of continuation health benefits, except as expressly provided for herein.

3. It is understood and agreed that this Settlement is the compromise of a disputed claim for benefits, and that the payment made to James Oakley pursuant to this Agreement is not to be construed as an admission of liability on the part of the City of Longmont.

4. The City of Longmont shall reimburse JoAnn Oakley, as conservator of James Oakley, at an average daily rate not to exceed $80.46 for 435 days, the total not to exceed the sum of $35,000.00, as payment for eligible services provided to James Oakley by Learning Services, Bear Creek, from December 21, 1988 through February 27, 1990. JoAnn Oakley shall provide the City of Longmont with documentation supporting the average daily cost of covered expenses provided by Learning Services, Bear Creek for the period of December 21, 1988 through February 27, 1990. JoAnn Oakley, as conservator of James Oakley, shall pay to the City of Longmont the applicable premium for continuation health coverage under the City of Longmont's group health

plan, said premium to be deducted from the total amount to be reimbursed to JoAnn Oakley for services rendered by Learning Services, Bear Creek from December 21, 1988 through February 27, 1990. James Oakley hereby expressly waives his right to claim continuation health benefits for any other form of treatment, arising out of any injury or illness, it being expressly understood that James Oakley shall be limited to making claims for payment of benefits against any other insurance carrier which may provide benefits on his account, including but not limited to dependent coverage which is available to him under his wife's group health insurance plan.

5. The City, in exchange for this agreement limiting its liability, if any, for claims under the Group Health Plan, agrees not to seek a stay of execution or supersedeas pending appeal in James Oakley vs. City of Longmont, United States District Court case number 88-B-1204, and United States Circuit Court case number 89-1021.

6. With regard to the case of James Oakley vs. City of Longmont, United States District Court case number 88-B-1204, and United States Circuit Court case number 89-1021, all rights, claims, and causes of action are reserved to the parties therein with respect to the pursuit of further appeals, writs of certiorari, and any and all matters which may be considered by the

United States District Court upon remand. The City reserves the right, upon reversal of the U.S. Circuit Court decision, to pursue recovery of any and all amounts paid hereunder from James Oakley, his estate, and any health care providers.

7. James Oakley shall provide to the City of Longmont a billing statement from Learning Services, Bear Creek, itemizing all medical, therapeutic, and/or rehabilitative treatment provided to James Oakley by Learning Services, Bear Creek since December 21, 1988.

8. Joanne Oakley, as Conservator of the person and estate of James Oakley, warrants that she has the authority and capacity to execute this Agreement on

behalf of James Oakley, and further warrants that no other person or entity has any interest in the claims referred to in this Settlement Agreement, and that she has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Settlement Agreement.

9. Claybourne M. Douglas, the City Attorney for the City of Longmont, warrants that he has the authority to execute this Agreement on behalf of the City of Longmont, and to bind the City hereby.

10. This Settlement Agreement contains the entire agreement between the parties

hereto with regard to the matters set forth herein, and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each.

11. In entering into this Settlement Agreement, the parties represent that they have completely read the terms of this Settlement Agreement and that they have fully understood same, that they have reviewed same with their respective counsel, and voluntarily enter into this Settlement Agreement.

12. This Settlement Agreement shall be construed and interpreted in accordance of the laws of the State of Colorado.

Appendix 13a

13. This Agreement is the sole and complete Agreement between the parties regarding the matters compromised and agreed to herein, and supersedes any and all prior Agreements whether written or oral. This Agreement may be modified only in writing, signed by all the parties hereto.

DATED: February 19, 1990

/s/_____

Joanne Oakley, Conservator for James Oakley

DATED: February 22,1990

/s/_____

Claybourne Douglas

Appendix 14a

City Attorney for the City of Longmont

APPROVED AS TO FORM

DATED: February 19,1990

/s/_____

Mark E. Biddison

Stevens, Littman & Biddison

Attorney for James Oakley

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